

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
MARC SOBEL)
)
Applicant for Certain Part 90 Authorizations)
in the Los Angeles Area and Requestor of)
of Certain Finder's Preferences)
)
MARC SOBEL AND MARC SOBEL)
d/b/a AIR WAVE COMMUNICATIONS)
)
Licensee of Certain Part 90 Stations in the)
Los Angeles Area)

WT DOCKET NO. 97-56

To: The Commission

PETITION FOR RECONSIDERATION

Marc D. Sobel ("Sobel"), by his attorney and pursuant to Section 405 of the Communications Act of 1934, 47 U.S.C. § 405, as amended, and Section 1.106 of the Commission's Rules and Regulations, 47 C.F.R. § 1.106, respectfully seeks reconsideration of the Commission's *Memorandum Opinion and Order* (FCC 02-138), released May 8, 2002 ("MO&O"), insofar as it denied Sobel's February 27, 1998, *Revised Request for Inquiry and Investigation* ("Request for Inquiry"), in support whereof, the following is respectfully shown:

A. Introduction

1. In the *Decision* (emphasis added) (FCC 01-342), released January 25, 2002, the Commission declined to make a substantive ruling on the *Request for Inquiry*, concluding that it "has no bearing on ... review of the initial decision, and we need not consider it *further here*." *Decision* at ¶ 9 (emphasis added). The clear implication of the Commission's own choice of words was that the *Request for Inquiry* would receive "further" consideration somewhere other than "here" (i.e., outside the context of the above-captioned hearing proceeding). Accordingly,

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the Commission discussed the *Request for Inquiry* only fleetingly,¹ and did not include a disposition of it the ordering clauses of the *Decision*.

B. Commission's previous failure to act on the *Request for Inquiry*

2. In the *MO&O* the Commission erroneously states that, in the *Joint Petition for Reconsideration* in the above-captioned matter, "Sobel observe[d] that the Commission's decision dealt with [the *Request for Inquiry*]." *MO&O* at ¶ 11. Sobel actually pointed out that the Commission had *not* acted on the *Request for Inquiry*, he therefore merely sought a status clarification. Without either (a) confirming that the *Request for Inquiry* is still pending, or (b) addressing the substantive matters presented in the *Request for Inquiry* on their merits, the Commission summarily denied the pleading with no further substantive discussion. Sobel is therefore constrained to protect his rights by filing this timely request for reconsideration.

C. *Request for Inquiry* and revocation proceeding are separate matters

3. To the limited extent the Commission addressed the substance of the *Request for Inquiry*, it focused solely on whether "the Bureau's conduct had resulted in any material prejudice [to] Sobel," or whether "Sobel was denied a full opportunity to meet the issues raised." *Decision* at ¶ 9. Without conceding the accuracy of its resolution of those questions, the Commission entirely misses the point. For purposes of the *Request for Inquiry*, Sobel is not—as he repeatedly stated—seeking relief from sanctions that may be imposed in the license revocation proceeding. The purpose of the *Request for Inquiry* is to bring to the Commission's attention numerous instances of seriously improper and unethical (and in some instances, potentially illegal) misconduct on the part of Commission personnel and to ask that the Commission fully investigate these matters.

¹ The Commission's exceedingly brief discussion of the matter, *Decision* at ¶ 9, did not address the merits of the *Request for Inquiry*, and went solely to the decision not to address the filing in this proceeding.

4. The Commission's denial of Sobel's *Request for Inquiry* is entirely separate from its affirmation of its ruling in the hearing case, even though both actions were announced in the same written document. Sobel now, therefore, comes before the Commission seeking reconsideration of the Commission's failure to address the substance of the *Request for Inquiry* on its separate merits, as described above. Sobel has separately filed a timely notice of appeal with the United States Court of Appeals for the District of Columbia Circuit seeking review of an entirely separate matter, i.e., the Commission's actions affirming the initial decision of the presiding judge in the hearing case.²

5. The *Request for Inquiry* presents a substantially grave public interest matter that can not be summarily swept under the rug, regardless of its applicability to or effect on the hearing matter. Whether or not Sobel was prejudiced—indeed, whether or not Sobel should prevail in the hearing case—is an entirely separate and irrelevant matter. The relevant question here is whether the Commission will continue to ignore clear and compelling evidence of blatant misconduct by its staff.

D. Commission's Failure to Address the Merits and Explain its Reasoning

6. The Commission did not adequately address the merits in the single paragraph discussion of Sobel's pleading. The *Request for Inquiry* is a 55 page exposition and analysis of irregularities, improprieties, and illegalities in the investigation, designation, and prosecution of matters against Sobel and James A. Kay, Jr. ("Kay"). Nor were these mere allegations without support. The *Request for Inquiry* is accompanied by more than 300 pages of substantial proof in the form of sworn testimony, declarations, and virtually irrefutable documentary evidence. The gravity of these allegations and the extensive and compelling nature of the evidence presented in

² The notice of appeal was filed on June 5, 2002, and was assigned docket number 02-1174.

support certainly require much more critical consideration that can possibly be summarized in a brush-off consisting of a mere few sentences.

7. The *Decision* entirely ignores Section III of the *Request for Inquiry*, in which conclusive proof was given of a long-standing pattern of discrimination against Sobel and Kay vis-à-vis other land mobile radio applicants and licensees. The Bureau has exhibited a continual pattern of discrimination against Kay, and has obviously extended that animus to Sobel merely because of his association with Kay. Sobel here sets forth a brief summary:

- The Bureau reinstated licenses of Harold Pick, a primary informant and complainant against Kay, long after the valid cancellation of those licenses had become final. *Request for Inquiry* at pp. 14-17.
- The Bureau ignored conclusive documentary evidence that Harold Pick and his father, Gerard Pick (who was also known to the Bureau as a Kay enemy) had knowingly and intentionally falsified documents presented to the Commission. *Request for Inquiry* at pp. 17-19.
- The Bureau ignored conclusive evidence that James Doering, another informant and complainant against Kay, had knowingly submitted a falsified assignment of license application to the Commission. *Request for Inquiry* at pp. 19-21.
- The Bureau ignored the fact that Mr. Charles F. Barnett, another Kay adversary, admitted in sworn testimony that he has misrepresented facts to the FCC in a licensing matter. Mr. Barnett also admitted in sworn testimony that he had lied to Bureau staff about Kay in order to influence Commission action. The Bureau not only ignored these admitted instances of blatant misrepresentation, it allowed Barnett to retain and benefit from an invalid authorization secured by his lies. *Request for Inquiry* at pp. 21-23.
- The Commission ignored conclusive evidence, again supported by sworn testimony, that Christopher C. Killian, another Kay adversary, had arranged for a sham application to be filed in his wife's name for facilities for which he himself was ineligible, had taken steps to conceal this from the Commission, and then has sold the authorization to Nextel Communications, Inc. for a significant sum of money. *Request for Inquiry* at pp. 23-27.

8. Such abdication of regulatory responsibility by the Bureau, standing on its own, should be cause for serious concern on the part of the Commission; but when it is also considered that: (a) the types of misconduct described above, and conclusively demonstrated in

the *Request for Inquiry* and its accompanying exhibits, is similar to or much graver than the types of conduct Sobel and Kay had been accused of; and (b) each of the above-named individuals was a competitor of Kay and Sobel, and informant and complainant against Kay, and a potential witness against Kay, it becomes imperative that these allegations be thoroughly investigated.

9. Nor did the Commission address the substantial evidentiary support presented for the following concerns:

- Bureau staff “coached” at least one witness, leading him to execute a false declaration against Kay. It was demonstrated by substantial evidence, including the sworn testimony of the affiant, at a deposition where he was represented by counsel and subject to cross-examination, that he was led by Bureau staff to swear under oath to things he not only did not know to be true, but that he did not even understand. Moreover, the Bureau staff member involved clearly knew or should have known that the statement that he drafted for the affiants sworn verification was false. *Request for Inquiry* at pp. 43-53.
- The Bureau relied on informants against Kay, and initiated proceedings based largely on their statements, even though it knew or should have known that such parties were biased against Kay. *Request for Inquiry* at pp. 39-42. The Bureau neglected to engage in even a minimal attempt to verify the statements thus offered, even though they would easily have been shown to be false. *Id.*
- Bureau staff engaged in ex parte communications with Kay’s opposition in a contested matter, apparently in an attempt to sabotage Kay’s licensing and business activities. *Request for Inquiry* at pp. 32-34.
- Bureau staff may have maligned Kay in discussions with Los Angeles police, thus influencing the latter not to pursue a valid complaint by Kay of theft of service by one of the Bureau’s informants against Kay. *Request for Inquiry* at pp. 35-37.

10. The various items set forth above are not exhaustive, but they show the gravity of the allegations presented in the *Request for Inquiry*. It is once again noted that each of these and the other allegations are fully supported by sworn testimony and probative documentary evidence. Moreover, while it has had numerous opportunities to do so, the Bureau has never refuted any of the factual allegations, nor has it ever provided an explanation for its highly improper conduct.

11. The Commission must explain its reasons for denying Sobel's *Request for Inquiry* notwithstanding this overwhelming and entirely unrefuted—indeed, unanswered—factual showing. On what basis has the Commission determined that the 300 plus pages of exhibits accompanying the *Request for Inquiry* to not support its allegations? Who of the witnesses whose sworn testimony transcripts were provided has the Commission found to be unreliable? And why? Which of the documents provided has the Commission found to be anything other than genuine and probative? And on what basis? In short, how can the Commission—charged with protecting the public interest and legally bound to treat all equally and fairly—ignore this massive evidence of misconduct by Bureau staff who have neither refuted the specific factual allegations nor provided an explanation for their misbehavior?

12. Sobel, and the public interest, demand a reasoned exposition of the Commission's reasons for totally ignoring the numerous, substantial, and fully supported allegations in the *Request for Inquiry*.

WHEREFORE, Marc D. Sobel, respectfully requests that the Commission reconsider its *Memorandum Opinion and Order* (FCC 02-138), released May 8, 2002, insofar as it denied Sobel's February 27, 1998, *Revised Request for Inquiry and Investigation*.

Respectfully submitted June 7, 2002:

Marc D. Sobel

By:

A handwritten signature in black ink, reading "Robert J. Keller", with a checkmark above the first letter of the first name.

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Certificate of Service

I, Robert J. Keller, counsel for Marc D. Sobel, hereby certify that on this 7th day of June, 2002, I caused copies of the foregoing **LIMITED PETITION FOR RECONSIDERATION** to be served, by U.S. mail, to the following:

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